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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JEREMIAH L. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOANNE L. et al.,

Defendants and Appellants.

D062243

(Super. Ct. No. SJ12729A-B)

APPEALS from judgments of the Superior Court of San Diego County, Garry G.  
Haehnle, Judge. Affirmed.

Joanne L. and Marco L. (together, the parents) appeal judgments declaring their  
minor children, Jeremiah L. and Josiah L. (together, the minors), dependents of the  
juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (j)<sup>1</sup>  
and removing them from parental custody. The parents challenge the sufficiency of the

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

evidence to support the court's jurisdictional findings and dispositional orders. We affirm the judgments.

## FACTUAL AND PROCEDURAL BACKGROUND

On February 9, 2012, the San Diego County Health and Human Services Agency (Agency) received a call from the school that six-year-old Jeremiah had a black eye. The social worker who interviewed Jeremiah noticed he had bruising on one side of his face, under his eye and on his forehead. Jeremiah said his dad, Marco, had gotten angry that morning because Jeremiah wanted to bring a necklace to school. He demonstrated how Marco slapped and punched him in the face, choked him several times and slammed him into the couch, causing his injuries. Jeremiah reported his mother, Joanne, and two-year-old brother, Josiah, were present at the time. He said that on other occasions, Joanne hit him with her hand or a belt, and both parents had previously hit Josiah in the face.

The parents initially denied Marco hit Jeremiah that morning, but neither of them had an explanation for the bruising. They speculated the injury occurred when the minors were wrestling the previous night or during a fight Jeremiah had with another child at school. Marco told the social worker, "I didn't touch him at all." However, the next day, Marco admitted he had grabbed Jeremiah firmly by the shoulders, picked him up and put him in a corner. He denied seeing any marks on Jeremiah's face, but then said he may have seen some scratches on his cheek. When the social worker asked Joanne whether she noticed any marks on Jeremiah before bringing him to school on February 9, she said she saw what looked like a rash under his eye. Joanne admitted Marco had grabbed Jeremiah firmly by the shoulders, put him in a corner and told him to stop lying.

Both parents said Jeremiah had behavioral issues such as fighting and stealing at school, and lying to avoid getting in trouble.

Jeremiah's teacher said she first noticed the bruising when Jeremiah was rubbing his face. She asked him what happened and he said his dad punched him. Jeremiah gave the same explanation to the school receptionist, the school nurse and the school counselor. He told the receptionist that Marco also hits Josiah. He told the nurse that the bruise hurt and said, "my dad hit me because I did something bad."

Joyce Adams, M.D., a child abuse expert at Rady Children's Hospital, reviewed photographs of Jeremiah's bruises and reported "this is definitely a patterned mark that fits with a slap or punch to the head." Dr. Adams noted accidental falls do not cause this type of patterned bruise, and the mark was consistent with Jeremiah's statement that Marco hit him.

Agency filed a petition in the juvenile court alleging Marco had inflicted serious physical harm on Jeremiah within the meaning of section 300, subdivision (a) and the parents had a history of using corporal punishment on him. Agency also filed a petition as to Josiah, alleging he was at substantial risk of abuse or neglect as a result of his sibling's abuse. (§ 300, subd. (j).) The court made prima facie findings on the petitions and detained the minors in out-of-home care. The parents declined the offer of voluntary services because Marco said he had done nothing wrong.

During a forensic interview performed by a licensed clinical social worker, Jeremiah demonstrated how Marco grabbed his throat and pushed him. Jeremiah again

said Joanne hits him with a belt. He said Marco hits him with his hand and with a belt, and Josiah also gets hit. Jeremiah denied being struck on the head while at school.

Joanne told social worker Greg Thedell that she remembered Jeremiah had been upset on the morning of February 9 and was hitting his head against the inside of the car door when she drove him to school. She recalled that Jeremiah's head was pink in the area of the bruise, but she did not see a bruise. Joanne also said Jeremiah told her a little boy hit him and he fell down. She was not sure how Jeremiah's injuries occurred because he constantly lies. Contrary to her prior denial of using physical discipline, Joanne said she hit Jeremiah with a belt one time and it left a red mark on his buttocks. Marco, however, said Joanne used a belt to discipline Jeremiah a couple of times. Although Marco previously said he had spanked the minors only three times in their lives, he now said he and Joanne had spanked Jeremiah 20 times.

Thedell spoke with Dr. Adams about whether Jeremiah's bruising could have been caused by banging his head against the inside of the car door. Dr. Adams said the two linear pattern marks were characteristic of a slap. Had Jeremiah banged his head as described, he would have had bruising on or above the temple, and his bruising was not in this area.

At the contested jurisdiction and disposition hearing, the court received in evidence Agency's reports. Social worker Karen Norkowski testified Joanne maintained Marco was innocent and Jeremiah had lied. Norkowski further testified she followed Agency procedure and protocol when she electronically sent the photographs of Jeremiah's injuries to Dr. Adams. Because of Jeremiah's age, verbal ability and

consistent reports to several other professionals, an in-person medical examination was not necessary and Dr. Adams did not ask to examine Jeremiah after seeing the photographs.

After considering the evidence and arguments of counsel, the court sustained the allegations of the petitions, declared the minors dependents, removed them from parental custody and placed them with a relative. The court ordered the parents to participate in reunification services.

## DISCUSSION

### I

The parents challenge the sufficiency of the evidence to support the court's jurisdictional findings that Marco physically abused Jeremiah. They assert: (1) the court improperly relied on Jeremiah's statements while ignoring other, more likely causes of the injuries; and (2) it was not reasonable for the court to believe the allegations of physical abuse because Agency made no effort to have Jeremiah physically examined despite his claim Marco had punched him in the face and choked him.

### A

In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. Evidence is "substantial" if it is " 'reasonable, credible, and of solid value.' " (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile

court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

## B

Section 300, subdivision (a) provides a jurisdictional basis for the court when: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent . . . . For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent . . . which indicate the child is at risk of serious physical harm. . . ." The statute excludes from the category of serious physical harm "reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury." (*Ibid.*)

In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of *children who are at risk of that harm.*" (§ 300.2, italics added.) The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52

Cal.App.4th 183, 194-196.) The focus of section 300 is on averting harm to the child.  
(*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

## C

Here, the evidence showed Jeremiah had a large bruise on the side of his face, under his eye and on his forehead. He gave a consistent account to his teacher, the school receptionist, nurse, counselor and social worker of how Marco hit him and caused his injuries. Photographs of the injuries reviewed by Dr. Adams, a child abuse expert, confirmed they were nonaccidentally inflicted because the linear pattern marks were consistent with a slap as Jeremiah reported and demonstrated. Jeremiah was forthcoming and consistent when stating both parents had previously hit him and Josiah. Nothing in the record supports the parents' claim that Jeremiah habitually lied, and therefore was lying about the physical abuse they inflicted.

Moreover, the parents could not explain Jeremiah's injuries, and they speculated inconsistently about how the injuries happened. Marco denied, but then admitted, he had grabbed Jeremiah firmly by the shoulders, picked him up and put him in a corner. Marco also admitted he and Joanne had previously spanked Jeremiah 20 times, not three. Joanne first denied using physical discipline on the minors, but then said she hit Jeremiah with a belt one time and it left a red mark on his buttocks. Marco contradicted this, saying Joanne used a belt to discipline the minors several times. After the minors were removed from the home, Joanne remembered Jeremiah had been hitting his head against the inside of the car door when she drove him to school on February 9. She also claimed Jeremiah told her a little boy hit him and he fell down. However, in Dr. Adams's expert

medical opinion, Jeremiah's facial bruises could not have been caused by banging his head or by a fall.

The parents assert the evidence did not support the jurisdictional findings because, despite the seriousness of the allegations, Jeremiah was never examined by any medical personnel to determine the scope of his injuries. However, Jeremiah was examined by the school nurse immediately after the bruises were discovered. When social worker Norkowski arrived at school, she sent photographs of Jeremiah's injuries to Dr. Adams. Because of Jeremiah's age, verbal ability and consistent reports of how he was injured, Agency procedure and protocol did not necessitate an in-person medical examination. Dr. Adams did not ask to examine Jeremiah because the photographs "clearly" showed he had been slapped. Under these circumstances, nothing more was required to establish Jeremiah had been physically abused.

By arguing there were other, more likely causes of Jeremiah's injuries, the parents are essentially asking us to reweigh the evidence and substitute our judgment for that of the juvenile court. This we cannot do. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53.) The court expressly found Jeremiah's statements to be credible. The court also considered, but rejected, the parents' alternative explanations and their claim that Jeremiah lied. In this regard, we defer to the juvenile court because we have no power to judge the effect, value or weight of the evidence, consider the credibility of witnesses or resolve conflicts in the evidence. (*In re S.A.*, *supra*, 182 Cal.App.4th at p. 1140.) "We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses." (*In re Sheila B.* (1993) 19 Cal.App.4th 187,



199-200.) Substantial evidence supports the court's findings Jeremiah had suffered, or was at substantial risk of suffering, serious physical harm inflicted nonaccidentally by his parent. (§ 300, subd. (a).)

## II

The parents challenge the sufficiency of the evidence to support the court's dispositional orders. They assert removing the minors from their custody was not necessary to protect them, and there were reasonable alternatives to removal.

### A

Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings constitute prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) We review the court's dispositional findings for substantial evidence. (*In re Kristin H.*, at p. 1654.)

### B

Here, the court's removal orders were based on findings, supported by substantial evidence, that Marco inflicted serious physical harm on Jeremiah, and Josiah was at substantial risk of harm as a result of the abuse of his sibling. (§ 300, subds. (a) & (j).) The evidence also showed the minors would be at substantial risk of harm if returned home and there were no reasonable means by which they could be protected without removal. The parents, who admittedly used physical discipline on the minors in the past,

refused to accept any responsibility for Jeremiah's injuries. Instead, they blamed others and maintained Jeremiah was a liar. In the social worker's opinion, the minors would not be safe in the parents' custody until the parents gained insight about the stress they were experiencing and how it affects their parenting, and learned how to avoid using excessive physical punishment.

Moreover, because Marco continued to deny he caused Jeremiah's injuries and the parents declined voluntary services at the outset of the proceedings, a reasonable inference could be drawn that the parents would continue to use inappropriate discipline on the minors if they remained in the home. The absence of reasonable alternatives to removal, coupled with the identified risk the parents posed to the minors, support a finding the minors could not be protected without removing them from parental custody.

#### DISPOSITION

The judgments are affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.